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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

14 IN RE SEAGATE TECHNOLOGY LLC  
LITIGATION,

Case No. 5:16-cv-00523-RMW

**DEFENDANT'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
RESPONSE TO PLAINTIFFS' MOTION  
FOR APPOINTMENT OF INTERIM CO-  
LEAD CLASS COUNSEL**

18 CONSOLIDATED ACTION

Hearing Date: June 17, 2016  
Hearing Time: 9:00 a.m.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Defendant Seagate Technology LLC (“Seagate”) hereby responds to the Motion of plaintiffs Christopher Nelson, Dennis Crawford, Joshua Enders, Adam Ginsberg, David Schechner, Chadwick Hauff, James Hagey, Nikolas Manak, John Smith, and Dudley Lane Dortch IV (collectively “Plaintiffs”) for an Order appointing their attorneys, Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and Axler Goldich LLC (“Axler Goldich”) (collectively “Counsel”) as Interim Co-Lead Class Counsel for the *In re Seagate Technology LLC*, No. 16-cv-00523, consolidated putative class actions.

**I. INTRODUCTION**

Counsel seek appointment as interim co-lead class counsel pursuant to Federal Rule of Civil Procedure (“FRCP”) Rule 23(g)(3). Plaintiffs argue that Counsel’s appointment will “protect[] the interests of the putative class and empower[] counsel to move the case forward,” enumerating as reasons why Counsel are best suited for appointment their “significant experience in complex class action litigation” and “intimate[] familiar[ity] with the applicable law.” Motion, 4:16-17, 21-23. Notably, Plaintiffs fail to address why Counsel’s appointment is necessary at this juncture. Absent such reasons, the Court should deny Plaintiffs’ motion at this time. First, appointment of interim class counsel is premature and unnecessary because there are no overlapping, duplicative, or competing lawsuits pending before this Court or other federal courts against Seagate, and no other counsel are competing with Hagens Berman and Axler Goldich for appointment. Second, Counsel have failed to demonstrate an ability to proceed efficiently, a trend that continued with the instant unnecessary Motion. The Motion should be denied.

**II. PROCEDURAL HISTORY**

On February 1, 2016, Counsel filed a Complaint against Seagate on behalf of Plaintiff Christopher A. Nelson. Just four days later, on February 5, 2016, Counsel filed a separate Complaint against Seagate on behalf of Plaintiffs Adam Ginsberg, Dudley Lane Dortch IV, Dennis Crawford, and David Schechner concerning the same subject matter. Seagate filed Motions to Dismiss the Complaints in both cases on April 6, 2016. On May 4, 2016, Counsel filed Amended Complaints in both cases. In the Amended Complaint for *Ginsberg*, Counsel

1 added Plaintiffs Joshua Enders, Chadwick Hauff, James Hagey, John Smith, and Nikolas Manak.  
 2 On May 9, 2016 – just five days after filing amended complaints in both cases – Counsel filed a  
 3 Consolidated Amended Complaint joining *Ginsberg* and *Nelson*.

### 4 **III. ARGUMENT**

5 Plaintiffs rely on the factors set forth in FRCP Rule 23(g)(1) to argue they should be  
 6 appointed interim co-lead class counsel. Motion, 7:3-17. But they fail to address the threshold  
 7 question of why appointment of interim co-lead class counsel is necessary, procedurally proper, or  
 8 otherwise beneficial at this time. Although Rule 23(g)(3) states “the court may designate interim  
 9 counsel to act on behalf of a putative class before determining whether to certify the action as a  
 10 class action,” the commentary to Rule 23 cautions that such appointment should be made only “if  
 11 necessary to protect the interests of the putative class.” Here, Plaintiffs request for Counsel’s  
 12 appointment as Interim Co-Lead Class Counsel is premature, unnecessary, and demonstrates a  
 13 continued inefficiency in their approach to this litigation.

#### 14 **A. Plaintiffs’ Request For Appointment of Interim Co-Lead Class Counsel is Premature** 15 **and Unnecessary**

16 Appointment of interim class counsel is appropriate where there are competing lawsuits  
 17 and/or counsel:

18 Appointment of interim lead counsel should be considered in cases where  
 19 multiple lawyers seek to represent the proposed class and the court determines  
 20 that designation of an interim lead counsel is necessary to protect the interests of  
 21 the putative class during pre-certification proceedings, discovery, including  
 22 retaining experts, and any settlement discussions . . . [d]esignation of interim  
 counsel also may be appropriate when parallel, duplicative or competing suits  
exists, and a serious risk of unfair prejudice to the putative class members exists.

23 1 JOSEPH M. McLAUGHLIN, McLAUGHLIN ON CLASS ACTIONS: LAW AND PRACTICE §  
 24 4:38 (12th ed. 2015) (Emphasis added). The Advisory Committee Notes to Rule 23  
 25 further suggest that pre-certification appointment of interim class counsel may be  
 26 necessary where there is “rivalry or uncertainty that makes formal designation of interim  
 27 counsel appropriate.” None of these circumstances is present here.

1 Courts have rejected appointment of interim class counsel where such appointment is  
 2 unnecessary. For example, in *In Re Nest Labs Litigation*, this Court denied a pre-certification  
 3 motion to appoint two law firms as co-lead interim class counsel because it was unnecessary.  
 4 Order Denying, Without Prejudice, Motion to Appoint Interim Class Counsel, No. 14-cv-01363-  
 5 BLF, 2014 U.S. Dist. LEXIS 115596, at \*4-5 (N.D. Cal. Aug. 18, 2014) (Freeman, J.). As here,  
 6 *In Re Nest Labs Litigation* “originated as two separate cases with similar complaints” that were  
 7 later consolidated into one action. *Id.* at \*3. *In Re Nest Labs Litigation* was “not the type of case  
 8 that warrants appointment of interim class counsel” because no “special circumstances warranting  
 9 the appointment” were present.<sup>1</sup> *Id.* at \*3-4. In making its determination, the Court noted a lack  
 10 of: (1) “tag-along” lawsuits, complaints filed, or other actions that might have been consolidated,  
 11 and (2) rivalry among law firms or uncertainty as to the firms’ respective roles. *Id.* at \*3-4. The  
 12 Court further noted that the law firms plaintiffs sought to appoint were already “coordinating and  
 13 collaborating to prosecute the consolidated actions,” and that greater efficiency could therefore be  
 14 achieved only if the court appointed one of them, and not both. *Id.* at \*4.

15 The same is true here. None of the “special circumstances” warranting appointment of  
 16 interim class counsel exist. Plaintiffs have cited no other complaints or actions that may be  
 17 consolidated into the present action.<sup>2</sup> There is no rivalry between Hagens Berman and Axler  
 18 Goldich as to their respective roles. Hagens Berman and Axler Goldich have already coordinated  
 19 the filing of the original cases, consolidation of the cases into one action, and are now coordinating  
 20 their jointly-filed motion for appointment as interim co-lead class counsel. As in *In Re Nest Labs*  
 21 *Litigation*, greater efficiency could therefore be achieved only if one law firm were selected.  
 22 Otherwise, there is nothing preventing Hagens Berman and Axler Goldich from proceeding as

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23 <sup>1</sup> The circumstances supporting appointment of counsel before a class is certified are further  
 24 discussed at section III.B, infra.

25 <sup>2</sup> See also *Wang v. OCZ Tech. Group, Inc.*, No. C 11-01415 PSG, 2011 U.S. Dist. LEXIS 69803, at  
 26 \*7 (N.D. Cal. June 29, 2011) (“This court has a single action and a single legal team seeking to be  
 27 appointed interim lead counsel. Although other related cases may be consolidated with this case in  
 28 the future, at this time, the responsibility for protecting the interests of the class in this court is clear  
 . . . [a]ppointing lead interim counsel at this time therefore is unnecessary and would undermine  
 principles of judicial efficiency.”)

1 they already have in the absence of such an appointment. *See* Rule 23 Advisory Committee Note  
 2 (“[f]ailure to make the formal [interim] designation does not prevent the attorney who filed the  
 3 action from proceeding in it.”).

4 **B. Plaintiffs Have Failed to Demonstrate Efficiency In These Proceedings**

5 Throughout their moving papers, Counsel cite efficiency as a basis for granting them  
 6 interim co-lead class counsel status. In particular, Plaintiffs state they are “highly experienced in  
 7 efficiently litigating complex consumer class action litigation.” Motion, 8:15. Although Seagate  
 8 does not contest Counsel’s qualifications as lawyers or their experience with complex consumer  
 9 class action litigation, the procedural history of this case does not support Plaintiffs’ assertion that  
 10 their appointment will lead to greater efficiencies. Motion, 13:23-27 (“Proposed Interim Co-Lead  
 11 Counsel will manage the work efficiently and avoid waste and duplication. Assignments to firms  
 12 will be made to fit a particular firm’s expertise and not in an effort to ‘make work’ or drive up  
 13 lodestar.”). Counsel initially filed substantially similar and overlapping complaints in *Nelson* and  
 14 *Ginsberg* only four days apart, and later filed amended complaints in both cases only five days  
 15 before filing a Consolidated Amended Complaint. None of these procedural maneuvers appeared  
 16 to have any purpose, and Seagate has now been required to brief its 12(b)(6) motion three times.  
 17 Counsel’s approach thus far has not demonstrated efficiency.

18 **IV. CONCLUSION**

19 For the foregoing reasons, Seagate respectfully requests that the Court deny Plaintiffs’  
 20 Motion for Appointment as Interim Co-Lead Class Counsel, without prejudice should a basis for  
 21 renewing the motion later arise.

23 Dated: May 27, 2016

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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 ANNA S. McLEAN

27 Attorneys for Defendant  
 Seagate Technology LLC